

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

PLAINTIFF,

CASE NO. CR-12-00888-EJD

VS.

SAN JOSE, CALIFORNIA

JOHN GERINGER, CHRISTOPHER
LUCK, AND KEITH EVERTS RODE,

MAY 12, 2014

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DEFENDANTS.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J.DAVILA
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: OFFICE OF UNITED STATES ATTORNEY
BY: JEFFREY SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

FOR DEFENDANT LUCK: LAW OFFICES OF JEANE DEKELVER
BY: JEANE DEKELVER
4750 ALMADEN ESPRESSWAY, SUITE 124
SAN JOSE, CALIFORNIA 95118

FOR DEFENDANT GERINGER: LAW OFFICES OF MICHAEL WHELAN, JR.
BY: MICHAEL WHELAN
703 MARKET STREET, #913
SAN FRANCISCO, CALIFORNIA 94103

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
TRANSCRIPT PRODUCED WITH COMPUTER.

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A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT RODE: ARNOLD LAW FIRM
BY: MARK ALAN ARNOLD
45 EAST JULIAN STREET
SAN JOSE, CALIFORNIA 95112

1 SAN JOSE, CALIFORNIA

MAY 12, 2014

2 P R O C E E D I N G S

3 (COURT CONVENED.)

4 THE CLERK: CALLING CASE NUMBER 12-888, UNITED
5 STATES VERSUS JOHN GERINGER, CHRISTOPHER LUCK, AND KEITH RODE.

6 MR. WHELAN: GOOD AFTERNOON, YOUR HONOR. MICHAEL
7 WHELAN ON BEHALF OF JOHN GERINGER WHO IS PRESENT.

8 THE COURT: THANK YOU. GOOD AFTERNOON.

9 MR. ARNOLD: GOOD AFTERNOON, YOUR HONOR. I'M MARK
10 ARNOLD ON BEHALF OF MR. RODE AND HIS PRESENCE HAS BEEN EXCUSED
11 FOR TODAY.

12 THE COURT: GOOD AFTERNOON.

13 MS. DEKELVER: GOOD AFTERNOON, YOUR HONOR. JEANE
14 DEKELVER APPEARING WITH CHRIS LUCK WHO IS PRESENT.

15 MR. SCHENK: AND FINALLY, YOUR HONOR, JEFF SCHENK ON
16 BEHALF OF THE UNITED STATES.

17 THE COURT: THANK YOU. GOOD AFTERNOON. I THINK WE
18 SET THIS JUST FOR AN INTERIM STATUS.

19 MR. SCHENK: WE DID, YOUR HONOR. WE HAVE A TRIAL
20 DATE ON AUGUST 4TH. WE HAVE NEVER SET A FINAL PRETRIAL
21 CONFERENCE SO I THINK MAYBE WE SHOULD DO THAT TODAY.

22 THE COURT: OKAY. IT LOOKS LIKE JULY 21ST, MIGHT BE
23 AVAILABLE.

24 AND WE SHOULD SET THAT, MS. GARCIA, AT 3:00 O'CLOCK?

25 THE CLERK: YES.

1 THE COURT: JULY 21ST, AT 3:00 O'CLOCK.

2 MR. SCHENK: THAT'S FINE WITH THE GOVERNMENT.

3 MR. ARNOLD: DID YOU SAY 2:00 O'CLOCK?

4 THE COURT: 3:00 O'CLOCK.

5 MR. ARNOLD: 3:00 O'CLOCK? THAT'S FINE.

6 MR. WHELAN: THAT'S FINE.

7 MS. DEKELVER: THAT WOULD BE ASSUMING WE'RE GOING TO
8 MAINTAIN THE AUGUST 4TH TRIAL DATE.

9 THE COURT: I'M NOT DISTURBING THE TRIAL DATE,
10 THAT'S CORRECT.

11 MS. DEKELVER: EVEN GIVEN THAT WE MAY HAVE SOME
12 EVIDENTIARY ISSUES THAT MAY NOT BE RESOLVED IN TIME FOR THAT
13 TRIAL DATE?

14 THE COURT: WELL, I DON'T KNOW ABOUT THAT YET SO I
15 APPRECIATE THE HEADS UP.

16 MS. DEKELVER: YES.

17 THE COURT: BUT WE'LL SET JULY 14TH, JULY 14TH --

18 MS. DEKELVER: I THOUGHT YOU SAID THE 21ST?

19 THE COURT: I BEG YOUR PARDON, THE 21ST, AT
20 3:00 O'CLOCK, AND THAT'S OUR FINAL PRETRIAL CONFERENCE.

21 MR. WHELAN: ON A FURTHER NOTE, CONSISTENT WITH
22 MS. DEKELVER, THE COURT MAY HAVE NOTICED THAT MR. GERINGER AND
23 I HAD A FEW ISSUES TO DEAL WITH BEFORE THE MAGISTRATE. I WANT
24 THE COURT TO KNOW THAT I'M PRETTY CONFIDENT THAT WE HAVE WORKED
25 THOSE ISSUES OUT.

1 THE COURT: OKAY. GREAT.

2 MR. WHELAN: I NORMALLY WOULD BE BETTER PREPARED FOR
3 STATUS IN TERMS OF GIVING THE COURT A REALISTIC IMPRESSION
4 TODAY AS TO WHERE I AM ON TRIAL READINESS, BUT SINCE I PUT
5 THINGS ON HOLD FOR A PERIOD OF TIME BECAUSE OF THAT PENDING
6 MOTION, I'M NOT IN A POSITION TO DO THAT AT THIS TIME.

7 COULD WE SET ONE MORE INTERIM STATUS PERHAPS IN
8 THREE WEEKS, AND I KNOW I FOR ONE WILL BE IN A BETTER POSITION
9 AT THAT TIME TO TRULY HAVE A BETTER ESTIMATE OF TRIAL READINESS
10 OR LACK THEREOF.

11 THE COURT: WAS THIS CASE SET FOR TRIAL BY
12 JUDGE KOH?

13 MR. SCHENK: IT WAS, IN JULY.

14 THE COURT: WAS THAT SET ON JULY 24TH, 2013?

15 MR. SCHENK: YES, YOUR HONOR.

16 MS. DEKELVER: THAT WAS OVER THE OBJECTION OF
17 COUNSEL. WE HAD ASKED FOR SEPTEMBER.

18 THE COURT: OKAY.

19 MR. WHELAN: IT WAS SET FOR JULY OF 2014.

20 MR. SCHENK: IN JULY OF 2013 WE SET A TRIAL DATE A
21 YEAR FROM THAT DATE, AND MS. DEKELVER IS RIGHT, HER PREFERENCE
22 WAS SEPTEMBER, NOT THE CURRENT AUGUST TRIAL DATE, BUT SHE KNEW
23 12 MONTHS IN ADVANCE OF -- ACTUALLY 13 MONTHS IN ADVANCE OF OUR
24 CURRENT TRIAL DATE.

25 WHEN WE CAME TO YOUR HONOR, THE GOVERNMENT ASKED FOR A

1 TRIAL DATE CONSISTENT WITH THE JUDGE KOH DATE, AND YOUR HONOR'S
2 AVAILABILITY WAS IN AUGUST. AND SO TO SPEAK, WE SPLIT THE BABY
3 AND GAVE THE DEFENSE HALF OF THAT ADDITIONAL CONTINUANCE THAT
4 THEY REQUESTED.

5 THE GOVERNMENT WOULD ACTUALLY OPPOSE THIS INTERVENING
6 STATUS HEARING. LET'S CALL IT WHAT IT IS, THE DEFENSE IS NOT
7 TODAY COMING TO YOUR HONOR AND ASKING FOR A DELAY OF THE TRIAL
8 BUT LAYING THE GROUNDWORK SAYING THERE MAY BE THESE EVIDENTIARY
9 ISSUES.

10 THE COURT: I'LL SET JULY 21, 3:00 O'CLOCK FOR A
11 PRETRIAL CONFERENCE DATE, AND IF THERE'S ANYTHING ELSE THAT
12 COMES UP IN THE INTERIM, EVERYONE KNOWS THE LOCAL RULES, RIGHT?
13 SO I'LL CONTINUE TO EXCLUDE TIME. TIME CONTINUES TO BE
14 EXCLUDED.

15 AND, MR. ARNOLD, YOUR CLIENT WILL BE REQUIRED TO BE
16 PRESENT FOR THE PRETRIAL.

17 MR. ARNOLD: UNDERSTOOD.

18 MS. DEKELVER: YOUR HONOR, ON BEHALF OF MR. LUCK,
19 THE EVIDENTIARY ISSUE THAT I SPOKE ABOUT CAME UP THE LAST TIME
20 THAT WE WERE IN COURT, IT'S MY UNDERSTANDING, BUT I MAY NOT BE
21 CORRECT ON THIS, BUT IT'S MY UNDERSTANDING THAT THE S.E.C.,
22 THROUGH THE S.E.C. ACTION, EITHER THEY OR THE F.B.I. PROCURED
23 KEITH RODE'S COMPUTER FOR THE CONTENTS OF KEITH RODE'S
24 COMPUTER, AND WE BROUGHT THIS UP AT THE LAST HEARING. AND
25 MR. SCHENK TOOK THE POSITION THAT THE U.S. ATTORNEY'S OFFICE IS

1 NOT IN POSSESSION OF THAT SO HE HAS NO DISCOVERY PRODUCTION
2 OBLIGATIONS AS TO THE CONTENTS OF THAT COMPUTER.

3 SINCE THE LAST COURT APPEARANCE I HAVE MADE INQUIRY TO TRY
4 AND INSPECT THE CONTENTS OF MR. RODE'S COMPUTER BECAUSE I THINK
5 THAT'S SOMETHING THAT WE NEED TO DO IN PREPARATION FOR THE
6 DEFENSE, AND I HAVE BEEN TOLD BY THE SPECIAL MASTER,
7 MR. STERLING, THAT THAT -- I DON'T KNOW IF THEY HAVE THE
8 COMPUTER OR THE CONTENTS, BUT THE CONTENTS OF THE COMPUTER ARE
9 NOT GOING TO BE AVAILABLE UNTIL AFTER THE C.P.A. HAS COMPLETED
10 HIS WORK TO FILE THE 2012, 2013 TAX RETURNS OF GLR GROSS FUND.
11 SO THAT'S THE EVIDENTIARY ISSUE THAT I'M CONCERNED ABOUT.

12 THE COURT: SO IF YOU HAVE A DISCOVERY MOTION, YOU
13 CAN TAKE IT UP WITH THE MAGISTRATE JUDGE AS TO HOW TO SOLVE
14 THAT.

15 MS. DEKELVER: AND, YOU KNOW, MR. SCHENK MAY BE
16 RIGHT THOUGH. IT MAY NOT BE -- IT MAY NOT BE THAT IT IS THE
17 DISCOVERY ISSUE THAT THE U.S. ATTORNEY'S OFFICE HAS THE
18 OBLIGATION TO PRODUCE OR LET US INSPECT IT.

19 SO I'VE GOT TO WORK THROUGH THE S.E.C. AND THE SPECIAL
20 MASTER, AND RIGHT NOW IT'S NOT AVAILABLE FOR INSPECTION UNTIL
21 THE C.P.A.'S FINISHED DOING THOSE TAX RETURNS. I HAVE ASKED
22 FOR A TIMEFRAME ON THAT AND HAVE NOT BEEN GIVEN A TIMEFRAME, I
23 WILL CHECK IN WITH THE MASTER EVERY WEEK ABOUT THAT. SO THAT'S
24 ONE EVIDENTIARY ISSUE.

25 THERE'S ANOTHER EVIDENTIARY ISSUE SPECIFIC TO MR. LUCK

1 THAT I HAVE BEEN PURSUING THAT IS TAKING LONGER THAN
2 ANTICIPATED, NOT BECAUSE OF OUR EFFORTS, BUT ON THE OTHER END.
3 SO I HAVE A CONCERN ABOUT THAT BEING COMPLETED IN A TIMELY
4 FASHION TO MAINTAIN THE AUGUST 4TH TRIAL DATE.

5 SO BASED ON THOSE TWO ISSUES, I WOULD ASK THAT WE NOT
6 MAINTAIN THE AUGUST 4TH TRIAL DATE, AND THAT WE PUT IT OUT 30
7 TO 60 DAYS.

8 THE COURT: OKAY. WELL, THANK YOU FOR THAT
9 INFORMATION.

10 I'M NOT PREPARED TO GRANT A CONTINUANCE AT THIS TIME,
11 NOTWITHSTANDING THE RECORD THAT YOU'VE MADE. I DON'T THINK
12 THAT'S SUFFICIENT INFORMATION FOR ME TO DISTURB THE TRIAL DATE.
13 SO I'LL LEAVE THE TRIAL DATE AS SET WITH THE PRETRIAL
14 CONFERENCE DATE AND ALL OF THE OTHER STATUTORY OBLIGATIONS OF
15 THE PARTIES TO CONFORM.

16 MS. DEKELVER: DO YOU WANT TO GIVE US A MOTIONS DATE
17 THEN FOR THE TRIAL?

18 THE COURT: YOU CAN SET YOUR MOTION, IF IT'S A
19 DISCOVERY MOTION, YOU CAN SET IT WITH JUDGE I THINK IT'S GREWAL
20 WHO HAS THE CASE. I'M NOT SURE, BUT HE'LL CALENDAR A MOTION
21 FOR YOU SHOULD THAT BE REQUIRED.

22 MS. DEKELVER: OKAY.

23 MR. SCHENK: THANK YOU VERY MUCH.

24 MR. ARNOLD: THANK YOU.

25 MR. WHELAN: THANK YOU, YOUR HONOR.

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(COURT CONCLUDED AT 1:56 P.M.)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

IRENE RODRIGUEZ, CSR, CRR
CERTIFICATE NUMBER 8076

DATED: MAY 12, 2014